

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL -9 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0108-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WALTER THOMAS WARD,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20055080

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Law Office of Ronald Zack
By Ronald Zack

Tucson
Attorney for Petitioner

ESPINOSA, Judge.

¶1 Petitioner Walter Ward seeks review of the trial court's order summarily dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. After a jury trial, Ward was convicted of multiple felony offenses including

aggravated assault, kidnapping, armed robbery, and sexual assault of a minor under fifteen. We affirmed his convictions and sentences on appeal. *State v. Ward*, No. 2 CA-CR 2007-0376 (memorandum decision filed May 20, 2009). As described in that decision, Ward and his codefendant, Stephen Calaway, had robbed a woman and her fourteen-year-old daughter at gunpoint, and Ward had sexually assaulted the girl. All of Ward's convictions in this case stemmed from this single incident.

¶2 In Ward's post-conviction relief proceeding, he alleged the trial court (1) improperly limited defense counsel's closing argument to sixty minutes and (2) erroneously denied his motion to present evidence of acts Calaway had allegedly committed after his arrest.¹ He also argued his trial counsel had been ineffective in pursuing these issues during trial and his appellate counsel had been ineffective in failing to raise them on appeal.²

¶3 The trial court summarily denied relief. In a well-reasoned minute entry order, the court correctly found Ward's claims of error by the court were precluded by his failure to raise them on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3) (preclusion by waiver). The court further found Ward had failed to state a colorable claim of ineffective assistance of trial or appellate counsel. *See State v. Boldrey*, 176 Ariz. 378, 380, 861

¹In a "Motion To Admit Relevant Third-Party Culpability Evidence," Ward's trial counsel sought to introduce evidence that Calaway had solicited the murder of an individual who had refused to provide him with an alibi for these offenses, arguing this evidence would "give[] credence" to Ward's defense that he "was a mere bystander while Calaway directed the robbery." The trial court denied the motion on the ground the evidence lacked probative value and would confuse the jury.

²Although Ward raised other claims in a pro se supplemental brief, he has waived our review of the trial court's denial of those claims. *See* Ariz. R. Crim. P. 32.9(c)(1) ("Failure to raise any issue . . . in the petition . . . for review shall constitute waiver of appellate review of that issue.").

P.2d 663, 665 (App. 1993) (trial court “need only conduct an evidentiary hearing where the defendant has raised a colorable claim for relief”).

¶4 In his petition for review, Ward repeats the arguments he made below and generally asserts the trial court abused its discretion in denying relief. Like the ultimate decision to grant or deny post-conviction relief, whether a claim is colorable, warranting an evidentiary hearing “is, to some extent, a discretionary decision for the trial court.” *State v. D’Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). We will not disturb a trial court’s summary denial of post-conviction relief absent an abuse of the court’s discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶5 Moreover, because the trial court clearly identified and correctly resolved the Rule 32 claims Ward raised, no purpose would be served by reexamining that analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Instead, we approve the court’s order denying post-conviction relief and adopt it. *See id.* Accordingly, although we grant review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge